S.B. CIVIL WRIT PETITION NO. 4167/2002.

M/S.RAJASTHAN SPINNING & WEAVING MILLS LTD.
VS.
THE STATE OF RAJASTHAN & ANR.

DATE OF ORDER : 01.09.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Rajendra Mehta for the petitioner/s.
Mr. B.L. Tiwari, Dy. Government Advocate.
Mr. K.N. Joshi for the respondent/s.

A Division Bench of this Court on 30.01.1995 while recording compromise, pleased to pass the following order:

> "Both the writ petitions come-up on compromise filed by Municipal Board and the petitioner. In view of compromise, that has been arrived at between the parties, Mr. Mehta submits that now they do not want to press these writ petitions. Mr. Shishodia and Mr. Udawat has no objection.
>
> Keeping in view all the facts and circumstances of the case, both writ petitions bearing D.B. Civil Writ Pet. Nos. 1255/83 and 2171/83 stand disposed of as not pressed on the basis of compromise arrived at between the parties."

After disposal of the writ petition, the Municipal Board, Gulabpura preferred an application to re-call the order dated 30.01.95 on the count that the Chairman who signed the compromise is not competent to sign the pleadings on behalf of the Board. The application preferred by the Board, came to be rejected by an order dated 23.10.2000. Being aggrieved by the orders referred above, the State of Rajasthan and the respondent Municipal Board filed a Special Leave Petition before Hon'ble Supreme Court and that came to be decided by order dated 25.02.2002, relevant portion of that reads as under:

> "Considering the facts and circumstances of the case, we are not inclined to interfere with the order under challenge. However, we make it clear that this order will not prevent the petitioners to initiate appropriate proceeding questioning the validity of the compromise, if permissible under law, and in case such a proceeding is initiated the same will be disposed by by the competent court in accordance with law without being influenced by the orders passed by the High Court in the case."

From perusal of the order dated 25.02.2002, it is apparent that without interfering with the orders passed by this Court, Hon'ble Supreme Court kept it open for the Municipal Board, Gulabpura and the State of Rajasthan to initiate appropriate proceedings questioning the validity of the compromise, if permissible under law before competent court.

The Municipal Board, Gulabpura without getting the said compromise set aside and even without approaching a court competent for getting the compromise set aside, issued a demand notice dated 29.8.2002 for charging the octroi duty that was subject matter of the writ petitions No. 1255/83 and 2171/83. By this petition for writ, the demand notice aforesaid dated 29.08.2002 is challenged.

Shri K.N. Joshi, learned counsel for the respondent Municipal Board, Gulabpura frankly states that no demand can be made from the petitioner without getting the compromise set aside. He further submits that the respondent – Municipal Board, Gulabpura will not make any demand from the petitioner in pursuant to the demand notice dated 29.08.2002 without getting the compromise concerned set aside by the competent court as it is left open by the Supreme Court.

In view of the statement given by the learned counsel for the respondent Municipal Board, Gulabpura and also in view of the fact that the compromise on basis of which the writ petitions No. 1255/83 and 2171/83 were decided, is still in currency, demand notice dated 29.08.2002 (Annexure 1) is quashed and the Municipal Board, Gulabpura is restrained from effecting any demand from the petitioner against octroi i.e. subject matter of the D.B. Civil Writ Petition Nos. 1255/83 and 2171/83 and also of this petition of writ without getting the compromise concerned set aside.

The writ petition is allowed accordingly.

(GOVIND MATHUR)J.

Anil/